

REMARKS/ARGUMENTS

Claims 1, 5-7, 9-11, 13, 15-19, 23-26 and 33-36 are currently pending in the present application. Claims 1, 6, 7, 9, 11, 13, 16-19, 33 and 34 have been rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over U.S. Patent No. 5,634,006 to Baugher et al. in view of U.S. Patent No. 6,999,449 to Barna et al. and U.S. Patent No. 6,240,097 to Wesolek et al. Claims 5, 10, 15, 22-24, 26, 35, and 36 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Baugher, Barna and Wesolek in view of U.S. Application Publ. No. 2002/0152319 to Amin et al. Applicant respectfully traverses the rejections.

Applicants re-submit the pending claims without amendment. In previous responses, the claims have been amended to cover subject matter directed to degrading or denying network access only as to predefined subsets of traffic types. In other words, when a utilization milestone is achieved, network access is affected (degraded or denied) only as to a subset of network traffic types. Specifically, Applicant has amended to claim 1 to include allowing but degrading, only with respect to a predefined subset of traffic types, the network access provided to the first user identified in the detecting step.' Claim 9 has been amended to independent form, and to include 'denying further network access to the first user identified in the detecting step only with respect to a predefined subset of traffic types.' Claims 11, 23 and 24 include similar limitations to those set forth above.

To support the rejections set forth above, the Examiner appears to allege that Baugher, as modified by or combined with the teachings of Barna and Wesolek, render the claimed subject matter obvious.

MPEP § 2143, Part G clearly defines the Examiner's initial burden for establishing a prima facie case of obviousness:

To reject a claim based on this rationale, [the Examiner] must articulate the following:

(1) a finding that there was some teaching, suggestion, or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings;

- (2) a finding that there was reasonable expectation of success; and
- (3) whatever additional findings based on the *Graham* factual inquiries may be necessary, in view of the facts of the case under consideration, to explain a conclusion of obviousness.

Furthermore, the 'prior art reference (or references when combined) need not teach or suggest all the claim limitations, however, Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art.' MPEP § 2141, section III. "[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." MPEP 2143.01, citing *KSR International Co. v. Teleflex Inc.*, 550 U.S. ___, ___, 82 USPQ2d 1385, 1396 (2007), quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006).

Proposed Baugher-Barna-Wesolek Combination Fails to Disclose or Suggest All Claim Limitations

The proposed Baugher-Barna-Wesolek Combination fails to disclose or suggest all claim limitations. In formulating the instant rejections, the Examiner essentially alleges that the references teach subject matter that simply is not taught. For example, the Examiner, relying on Baugher, Col. 7, line 47 to Col. 8, line 8, alleges that it teaches allowing, but degrading network access. See Office Action at 3. This cited passage, however, merely discloses that 1) bandwidth may be dynamically allocated, 2) that bandwidth is allocated in response to reservations; 3) that other nodes in the token ring are notified of the allocations/deallocations, 4) that an extended MIB can be used by the nodes of the token as part of the allocation/deallocation decisions, and 5) that a given node of the token may access the MIB atomically (meaning reserving access to it to make sure that other nodes do not overwrite the MIB variables during a given operation). The cited passage, however, does not teach allowing, but degrading access. In addition, the office action is devoid of any explanation as to how one of ordinary skill in the art would understand the teachings of Baugher to disclose or suggest allowing, but degrading access.

Furthermore, the Examiner has admitted that both Baugher and Barna fail to disclose the claimed subject matter, and relies on the teachings of Wesolek. This reliance on Wesolek is

misplaced. Wesolek merely teaches the distribution of data across a network in different frequency-modulated channels. See Wesolek, Col. 3, lines 6-11; Col. 6, lines 34-45. Wesolek teaches that access/denial to a given channel can be accomplished via 'scrambling, jamming, interdiction, or band-pass filtration.' Wesolek, Col. 3, lines 33-35. Access information is transmitted to a control channel that specifies what channels an end-user appliance is permitted to access. Wesolek, Col. 9, lines 15-19. The Examiner alleges that Wesolek teaches allowing, but, degrading access only with respect to a predetermined subset of traffic types. This allegation is specious. As discussed above, Wesolek merely teaches controlling access to network information by separating data into channel modulated streams. Access to a given channel is either permitted or denied in Wesolek—not degraded.

Moreover, the teachings of Wesolek, Amin, Barna, and Baugher, when viewed as a whole, fail to disclose or suggest the claimed subject matter. Baugher discloses methods and systems that reserve bandwidth for individual data flows initiated by hosts on a token ring network. Specifically, the system of Baugher operates to reserve or allocate bandwidth to individual data flows based on requested QoS parameters, current loading conditions, and existing allocations in the network. Baugher does not disclose a system that affects a characteristic associated with network access after the aggregate volume of data transfer within a given time interval, that spans at least one week, corresponding to a given user crosses a threshold. Stated in other terms, Baugher (operates on a flow-by-flow basis and allocates bandwidth based on availability). On the other hand, the claimed subject matter is directed to affecting network access based on aggregate volume of data transfer over a given time interval. For example, as Baugher teaches (see Col. 8, starting at line 25), when a requesting station attempts to reserve bandwidth for a flow, an allocation decision is made based on the current loading conditions of the network (in other words, how much bandwidth (throughput capacity) is currently being used, and how much bandwidth has been allocated to the requesting station. This reservation may fail because the requesting station may have reserved a total amount of bandwidth that exceeds an allocation, or the total bandwidth consumed by all stations may prevent a requested allocation from being fulfilled. Again, however, bandwidth refers to a current rate (usually expressed as bits per second) that can be allocated among stations. However, this has no

relation to the volume of data transfer referred to in the claims, which bases its affect on network access based on the aggregate volume of data that has been transferred over a given time interval, not the current bandwidth consumed by a given station or stations, as taught by Baugher. In other words, Baugher allocates bandwidth to a given data flow based on current loading and allocation conditions. The claimed invention, however, can be used to affect network access after a threshold volume of data has been transferred over a given time interval, regardless of the bandwidth currently consumed.

Amin discloses the deployment of accounting and QoS mechanisms across a computer network. That it discusses different traffic types has little bearing on the claimed subject matter, which, after a threshold is reached, treats some traffic types differently than others. Neither Baugher nor Amin disclose methods or systems that monitor aggregate data transfer for individual users over a time interval that spans at least one week, and affect a characteristic of the network access, only as to a defined subset of network traffic types, provided to a first user after the aggregate data transfer within a given time interval corresponding to the first user crosses a threshold value. Rather, as discussed herein, Baugher bases allocation decisions based on current loading and allocation conditions. Furthermore, while Barna discloses a volume-based network access control, it does not disclose a system that degrades or denies network access only as to a subset of network traffic types. Rather, in Barna, network access is either allowed as to all traffic types associated with a user/subscriber or denied as to all traffic types.

Insufficient Motivation or Suggestion to Combine/Modify

In addition, the Examiner's rationale for combining the teachings of the cited references makes little sense. For example, as Applicant has previously pointed out, Baugher discloses methods and systems that reserve bandwidth for individual data flows initiated by hosts on a token ring network. Specifically, the system of Baugher operates to reserve or allocate bandwidth to individual data flows based on requested QoS parameters, current loading conditions, and existing allocations in the network. Extending the analysis interval to a week would make no sense for an allocation decision for a data flow which is usually very short-lived. Furthermore, the Examiner's rationale to combine Wesolek with Barna and Baugher is

conclusory. Furthermore, the purported rationale of 'controlling and monitoring use of network information . . . , thereby enhancing operating efficiencies by focusing groups or individuals on appropriate subject matter and enjoying greater economies and protection with respect to software application licenses' would not motivate one of ordinary skill in the art to modify Barna and Baugher with Wesolek to create the claimed subject matter.

No Finding of Reasonable Expectation of Success

Furthermore, the Examiner has failed to establish or make any relevant finding of any reasonable expectation of success, as required by the MPEP, and therefore fails to establish a prima facie case of obviousness. Furthermore, in light of the different technologies among the references, the Examiner will be hard pressed to identify cogent and acceptable evidence that one of skill in the art would expect the combination to succeed. For example, in stretching the prior art to allegedly achieve the claimed subject matter, the Examiner essentially takes the Baugher (teaching allocation of bandwidth for a flow (not a user) in a token ring network) and Wesolek (a system primarily operating in a cable network system that distributes and controls access to information over discretely modulated channels).

In light of the foregoing, Applicant believes that all currently pending claims are presently in condition for allowance. Applicant respectfully requests a timely Notice of Allowance be issued in this case. If the Examiner believes that any further action by Applicant is necessary to place this application in condition for allowance, Applicants request a telephone conference with the undersigned at the telephone number set forth below.

Date: February 21, 2008

Respectfully Submitted,
LAW OFFICE OF MARK J. SPOLYAR
By
/Mark J. Spolyar/
Mark J. Spolyar
Reg. No. 42,164

Customer Number: 30505
Law Office of Mark J. Spolyar
2200 Cesar Chavez Street, Suite 8
San Francisco, CA 94124
415-826-7966
415-480-1780 fax